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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

12 OVERTURE SERVICES, INC.,  
13 Plaintiff and Counter  
14 v.  
15 GOOGLE INC.,  
16 Defendant and Counter

Case No. C 02-01991 JSW (EDL)

**DECLARATION OF CHRISTINE P. SUN  
IN SUPPORT OF GOOGLE'S  
OPPOSITION TO OVERTURE'S  
MOTION TO COMPEL PRODUCTION  
OF DAMAGES DOCUMENTS**

Date: March 9, 2004  
Time: 9:00 a.m.  
Dept: E, 15th Floor  
Judge: Hon. Elizabeth D. Laporte

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DECLARATION OF CHRISTINE P. SUN IN SUPPORT OF GOOGLE'S OPPOSITION TO OVERTURE'S  
MOTION TO COMPEL PRODUCTION OF DAMAGES DOCUMENTS  
CASE NO. C 02-01991 JSW (EDL)

1 I, Christine P. Sun, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and am an  
 3 associate in the law firm of Keker & Van Nest, LLP, counsel for Google Inc. ("Google") in the  
 4 above-captioned matter. This declaration is in support of Google's Opposition to Overture's  
 5 Motion to Compel Production of Damages Documents. I have personal knowledge of the facts  
 6 stated in this Declaration, and I could competently testify to them under oath.

7 2. Overture is correct that the parties agreed in or about August 2002 to postpone  
 8 discovery damages until after the claim construction hearing in this case. As noted on the top of  
 9 page three of the letter of Charles McMahon, then counsel for Overture, to me dated  
 10 February 12, 2003, Overture itself has objected to producing financial documents based on the  
 11 parties' agreement. *See* Corrected Byrnes Decl., Ex. T. To date, Overture has neither withdrawn  
 12 that objection nor, upon information or belief, produced the documents that it initially withheld  
 13 pursuant to that objection.

14 3. On January 8, 2004, three weeks prior to the due date of Google's responsive  
 15 claim construction brief, Overture's counsel, Andrew Byrnes, sent a letter to Google demanding  
 16 that Google produce all documents responsive to its 50+ damages requests, as well as  
 17 supplementing its discovery responses and updating its privilege log, by February 6, 2004. *See*  
 18 Corrected Byrnes Decl., Ex. L. This was the first time that Overture indicated it wished to  
 19 renege on its agreement to bifurcate damages discovery.

20 4. In response to Overture's January 8 letter, Google agreed to make a good faith  
 21 effort to supplement its discovery responses and provide an updated privilege log by February  
 22 13, 2004, which it did. Attached hereto as Exhibit A is a true and correct copy of my letter to  
 23 Andrew Byrnes dated January 9, 2004. Attached hereto as Exhibit B is a true and correct copy  
 24 of paralegal Scott Riewerts' letter dated February 13, 2004, without attachments. As to damages  
 25 discovery, citing Google's reliance on the parties' agreement and Overture's lack of diligence in  
 26 discovery on substantive matters, Google disagreed with Overture's contention that it was  
 27 appropriate to begin such discovery prior to the *Markman* hearing. *See* Ex. A.

28 5. On or about January 21, 2004, as a "compromise," Overture proposed that the

1 parties exchange damages discovery on a “date certain” shortly after the *Markman* hearing. See  
 2 Corrected Byrnes Decl., Ex. P. Overture stated that if Google did not provide a date by which it  
 3 could produce all damages-related documents within 3 business days, Overture would file a  
 4 motion to compel. *Id.*

5       6. The previous day, on January 20, 2004, Overture informed Google that it intended  
 6 to revise its proposed claim construction of two key disputed terms, “search result list” and  
 7 “search listing.” Attached hereto as Exhibit C is a true and correct copy of Andrew Byrnes’  
 8 letter to Daralyn Durie dated January 20, 2004. Overture demanded that Google respond in full  
 9 to those revisions in its January 30, 2004 responsive claim construction brief. When Google  
 10 requested that Overture stipulate to Google’s filing of a sur-reply of no more than 5 pages to  
 11 address Overture’s last-minutes revisions, Overture refused. Attached hereto as Exhibit D is a  
 12 true and correct copy of Andrew Byrnes’ letter to me dated January 22, 2004. Overture’s refusal  
 13 necessitated the filing of a motion by Google for a sur-reply, a request which the Court granted.  
 14 See Order dated February 6, 2004.

15       7. On Friday, January 23, 2004, Google responded to Overture’s January 21 demand  
 16 for a “date certain,” explaining that Google was still considering Overture’s request. See  
 17 Corrected Byrnes Decl., Ex. Q.

18       8. On Monday, January 26, 2004, I telephoned Mr. Byrnes, counsel for Overture,  
 19 and proposed that the parties exchange summary financial data in early April and produce other  
 20 damages-related documents on a reasonable date thereafter. I advised Mr. Byrnes that it would  
 21 take time to respond to Overture’s proposal for a “date certain” given the recentness of  
 22 Overture’s request and the need to revise Google’s *Markman* brief due to Overture’s last-minute  
 23 changes to its proposed definitions. I also made clear to Mr. Byrnes that it was Google’s  
 24 intention to work with Overture to work out a reasonable timetable for damage discovery. Mr.  
 25 Byrnes acknowledged Google’s need for time to respond to his client’s request. No mention was  
 26 ever made during this conversation of Overture’s intent to bring a motion to compel if Google  
 27 did not comply with Overture’s request for a “date certain” by noon on January 28, 2004 or any  
 28 other specified date.

1       9. On January 27, 2004, Overture's counsel sent a letter to me stating that Overture  
2 would move for a motion to compel if Google did not provide a "date certain" in less than 24  
3 hours. Attached hereto as Exhibit E is a true and correct copy of Mr. Byrnes' January 27, 2004  
4 letter. As the fax header indicates, I did not receive this letter until the afternoon of January 27.  
5 *Id.*

6       10. On January 27, 2004, in response to Mr. Byrnes' letter of earlier in the day, I sent  
7 a letter to Overture's counsel reiterating the need for additional time to assess the amount of  
8 discovery responsive to Overture's requests, and that Google would respond to Overture's  
9 demand for a "date certain" as soon as reasonably possible. Attached hereto as Exhibit F is a  
10 true and correct copy of my letter to Andrew Byrnes dated January 27, 2004. I also reminded  
11 Mr. Byrnes that the parties were required to meet and confer in good faith prior to filing motions  
12 to compel and that Google intended to seek sanctions against Overture if it continued to  
13 unilaterally set unreasonable deadlines for Google's responses to its requests. *Id.* I did not  
14 receive a response from Overture to my January 27, 2004 letter.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is  
16 true and correct. Executed this 17th day of February, 2004 at San Francisco, California.

/s/ Christine P. Sun  
CHRISTINE P. SUN